REMARKS

This Amendment responds to the final Office Action mailed July 17, 2008 in the above-identified application. The amendment does not raise new issues or require extensive consideration. Accordingly, entry of the Amendment and allowance of the application are respectfully requested.

Claims 1-34 are pending in the application. By this Amendment, claim 1 has been amended. While the added limitation is not explicitly described in the subject application, the limitation is inherent in the disclosure. Accordingly, no new matter has been added.

The Examiner has rejected claims 1, 3-6, 8-10, 13-16 and 18-34 under 35 U.S.C. § 103(a) as unpatentable over Chantrel et al. (EP 0507707) in view of Djupesland (WO 00/51672). Claims 2, 11, 12 and 17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Chantrel et al. and Djupesland as applied claim 1, further in view of Brugger (DE 3238149). Claim 7 is rejected under 35 U.S.C. § 103(a) as unpatentable over Chantrel et al. in view of Djupesland as applied to claim 1, further in view of Landis et al. (US 5,687,715). The rejections are respectfully traversed for the following reasons.

Chantrel discloses a therapeutic nebulizer which is equipped with an inhaler nozzle to be applied to a patient's nose. A constant aerosol flow is guided through the patient's nose, and pressure fluctuations are superimposed which are intended to cause the aerosol particles/droplets in the main aerosol flow to pass through the ostia and enter the paranasal sinuses. Chantrel fails to disclose a flow resistance device at the other of the alae of the patient's nose.

Djupesland discloses a device for delivering a substance to the nasal airway of a patient comprising, as a key feature, a closure unit for causing the closure of the oropharyngeal velum of the patient. Djupesland also teaches a delivery unit for delivering a gas flow entraining a substance to one of the nostrils of the patient but at such driving pressure as to flow around the

posterior margin of the nasal septum and out of the other nostril of the patient. The delivery device also includes an outlet unit which includes an outlet for the gas flow and a flow resistor.

Amended claim 1 is directed to a therapeutic aerosol device comprising a nebulizer device including an aerosol generator to which a gaseous medium for the generation of a main aerosol flow maybe supplied from a supply device, and a pressure connection device to supply pressure fluctuations which are superimposed on the main aerosol flow, a nosepiece configured to supply the aerosol into one of the two alae of the nose of a user connected to the nebulizer device, and a flow resistance device configured to be placed at the other of the two alae of the user's nose. The flow resistance device, in the absence of any device to close the oropharyngeal velum, causes aerosol from the main aerosol flow having pressure fluctuations superimposed thereon to reach the paranasal sinuses of the user and to be deposited therein.

In the Response to Arguments section of the Office Action, the Examiner contends that Applicant's newly added claim limitation is a recitation of the intended use of the claimed invention which must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art (Office Action, page 7, section 6). While Applicants do not necessarily concur with the basis for the rejection, claim 1 has been amended to recite that the flow resistance device, in the absence of any device to close the oropharyngeal velum, causes aerosol from the main aerosol flow having pressure fluctuations superimposed thereon to reach the paranasal sinuses of the user and to be deposited therein.

Amended claim 1 therefore defines a structural difference over the disclosures of Chantrel and Djupesland. In particular, Chantrel does not disclose a flow resistance device configured to be placed at the other of the two alae of the user's nose. Djupesland discloses a device for delivering a substance to the nasal airway of a patient including, as a key feature, a closure unit for causing the closure of the oropharyngeal velum of the patient. Djupesland also teaches a delivery unit for delivering a gas flow entraining a substance to one of the nostrils of

the patient, but at such driving pressure as to flow around the posterior margin of the nasal septum and out the other nostril of the patient. However, the key feature of the teaching of Djupesland is a device to close the oropharyngeal velum of a patient. This feature is described numerous times in the specification of Djupesland. See, for example, independent claims 1 and 22 of Djupesland. In view of such a clear teaching of the need for a device to close the oropharyngeal velum, Djupesland can not be considered to disclose a therapeutic aerosol device which relies only on the effect of a flow resistance device in the other nostril of the patient, in the absence of any device to close the oropharyngeal velum. To the contrary, the skilled person would understand Djupesland as teaching that the outlet unit 36 shown in Fig. 3 can be used only in combination with the oral exhalation unit 20 and the delivery unit 22. According to Djupesland, a device to close the oropharyngeal velum is required. There is no teaching in Djupesland to rely on the effects of the outlet unit alone.

Regarding the present invention, the flow resistance device provided at the other of the two alae of the user's nose is sufficient to achieve predictable deposition of the aerosol in the desired areas in the absence of any device to close the oropharyngeal velum. However, since this feature is stressed repeatedly in Djupesland, there is no teaching in Djupesland to provide a therapeutic aerosol device as defined by amended claim 1.

In summary, Chantrel and Djupesland, taken individually or in combination, do not disclose or suggest the therapeutic aerosol device including a flow resistance device configured to be placed at the other of the two alae of the user's nose, the flow resistance device, in the absence of any device to close the oropharyngeal velum, causing aerosol from the main aerosol flow having pressure fluctuations superimposed thereon to reach the paranasal sinuses of the user and to be deposited therein, as required by amended claim 1. For at least these reasons, amended claim 1 is clearly and patentably distinguished over Chantrel in view of Djupesland, and withdrawal of the rejection is respectfully requested.

Claims 2-34 depend from claim 1 and are patentable over the cited references for at least the same reasons as claim 1.

Since each of the dependent claims depends from a base claim that is believed to be in condition for allowance, Applicants believe that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. However, Applicants do not necessarily concur with the interpretation of the dependent claims as set forth in the Office Action, nor do the Applicants concur that the basis for the rejection of any of the dependent claims is proper. Therefore, Applicants reserve the right to specifically address the patentability of the dependent claims in the future.

Based upon the above discussion, entry of the Amendment and allowance of the application are respectfully requested.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed, or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. P0777.70000US00.

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Respectfully submitted,

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